

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TRANSFORMER SERVICES, INC.

Defendants.

CIVIL ACTION NO.

COMPLAINT

Plaintiff United States of America ("United States"), by the authority of the Attorney General of the United States, acting at the request of the United States Environmental Protection Agency ("EPA"), files this case and alleges as follows:

1. Plaintiff brings this civil action under Section 17 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601, et seq., and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761, against Transformer Services, Incorporated ("TSI"). This action seeks to obtain injunctive relief for TSI's violation of TSCA regulations.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 2201, and Section 17 of TSCA, 15 U.S.C. § 2616.

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), and 15

U.S.C. § 2616(a)(2), because TSI was and/or is doing business in this district, and because the acts, omissions or transactions constituting violations of 15 U.S.C. § 2614 occurred in this district.

4. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519.

STATUTORY AND REGULATORY FRAMEWORK

5. PCBs are toxic chemicals that are extremely stable and persistent in the environment. PCBs have been demonstrated to cause cancer, suppression of the immune system, liver damage, birth defects, impairment of reproductive capacity and other illnesses and injuries in laboratory animals. PCBs are also toxic to aquatic organisms, causing death, reduced growth, and impairment of reproductive capacity and other biological functions. PCBs are also toxic to humans, causing liver damage, adverse skin effects, and changes in other biological functions. PCBs are suspected of causing cancer in humans. PCBs bioaccumulate in humans and other organisms, which means that PCBs accumulate over time in living tissues in concentrations much higher than the concentrations to which the organisms are exposed in the environment. 47 Fed. Reg. 37344-45 (Aug. 25, 1982).

6. Section 6(e) of TSCA, 15 U.S.C. § 2605(e), generally bans the manufacturing, processing, distribution in commerce, use or disposal of PCBs unless authorized by EPA, or unless done in accordance with EPA rules, set forth at 40 C.F.R. Part 761.

7. Sections 15(1) and 409 of TSCA, 15 U.S.C. §§ 2614(1), 2689, make it unlawful for any person to fail or refuse to comply with Section 6(e) of TSCA, 15 U.S.C. § 2605(e), or any rule promulgated thereunder.

8. 40 C.F.R. § 761.50(a) states: “Any person storing or disposing of PCB waste must do so in accordance with subpart D of this part.”

9. 40 C.F.R. Part 761, subpart D (§§ 761.50 - 79), regulates storage and cleanup of PCB waste.

10. 40 C.F.R. § 761.3 defines a PCB item as any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

11. 40 C.F.R. § 761.3 defines PCB waste(s) as those PCBs and PCB Items that are subject to the disposal requirements of subpart D of 40 C.F.R. Part 761.

GENERAL ALLEGATIONS

A. Defendant

12. TSI is a corporation organized and existing under the laws of the State of New Hampshire. Its principal place of business is located at 74 Regional Drive, Concord, New Hampshire.

13. As a corporation, TSI is a "person," as defined at 40 C.F.R. § 761.3, and is subject to the requirements of 40 C.F.R. Part 761.

14. TSI is engaged in waste collection and disposal activities, including the servicing and maintenance of electrical transformers.

15. TSI owns and operates a business at 74 Regional Drive in Concord, New Hampshire (the "Facility") in which the Defendant stores PCB wastes generated by its customers for disposal, such as transformers and drums containing PCBs.

B. Factual Allegations Regarding EPA's Prior Enforcement Inspections

16. TSI has been cited by state and federal regulatory agencies for violating TSCA and its regulations on several previous occasions, including but not limited to a citation for failure to comply with PCB Storage Rules in 1979 and a 1985 violation for having too much PCB material in storage.

17. In 1998, EPA issued an administrative complaint against TSI for its violation of TSCA regulations (40 C.F.R. § 761.65(a)(1)) by failing to dispose of waste within one year from the date the waste was designated for disposal. EPA and TSI entered into a Consent Agreement and Order ("CAO") on January 8, 1998, which required TSI's PCB wastes to be disposed of by January 30, 1999. The CAO was extended twice by amendment. The first amendment allowing an extension was issued on July 15, 1999, and the second amendment, allowing an extension until July 31, 2001, was signed on January 29, 2001.

18. EPA filed a subsequent administrative complaint against TSI on January 30, 2001. Contemporaneously, EPA also filed another CAO with TSI that settled the claims raised in the complaint. These claims included improper storage, record keeping and annual report submission violations.

C. The Current Action

19. On or about July 19, 2005, EPA conducted a compliance inspection at TSI's facility ("2005 inspection"). During the inspection, the EPA inspectors evaluated conditions at the facility and reviewed various documents pertaining to TSI's inventory. Based on the 2005 inspection, EPA identified a violation of TSCA at TSI's facility.

COUNT I

Storage of PCB Waste for Greater than One Year

20. Plaintiff incorporates by reference paragraphs 1-19 above.

21. Under 40 C.F.R. § 761.65(a)(1), owners or operators of any facility used for the storage of PCBs and PCB items designated for disposal shall dispose of any PCB waste within one year from the date it was determined to be waste and the decision was made to dispose of it. This date is the date of removal from service for disposal at which the 1-year time frame for disposal begins.

22. Section 15(1) of TSCA, 15 U.S.C. § 2614(1), makes it unlawful for any person to fail or refuse to comply with any requirement prescribed by Section 6 of TSCA, 15 U.S.C. § 2605.

23. At the time of the 2005 inspection, TSI had over 50,00 pounds of PCB waste that had been stored at its facility for over one year.

24. By storing PCB waste at its facility for over one year, TSI violated 40 C.F.R. § 761.65(a)(1).

25. For this violation of Section 15(1) of TSCA, 15 U.S.C. § 2614(1), TSI is subject to specific enforcement under Section 17(a) of TSCA, 15 U.S.C. § 2616(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully prays that this Court:

- a. Find TSI liable on this one count of storing PCB waste in its facility for a period of greater than one year;
- b. Restrain TSI from violating TSCA's regulations pertaining to the storage and

management of PCB waste;

c. Compel TSI to comply with TSCA, including storage and reporting requirements;

and

d. Grant such other and further relief as this Court may deem just and proper.

Respectfully submitted,

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